

JOSEPH P. RUSSONIELLO (CABN 44332)
United States Attorney

BRIAN J. STRETCH (CABN 168973)
Chief, Criminal Division

KIRSTIN M. AULT (CABN 206052)
Assistant United States Attorney

450 Golden Gate Ave., Box 36055
San Francisco, California 94102
Telephone: (415) 436-6940
Facsimile: (415) 436-7234
E-mail: kirstin.ault@usdoj.gov

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
JAMES BEASLEY,)
)
Defendant.)
)
)

No. CR 89-0602 MHP

~~PROPOSED~~ ORDER DENYING DEFENDANT'S
MOTION FOR REDUCTION OF SENTENCE

The United States submits the attached Proposed Order regarding the Court's denial of
the defendant's request for reduction of his sentence.

DATED: October 9, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO
UNITED STATES ATTORNEY

/s

KIRSTIN M. AULT
Assistant United States Attorney

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,) No. CR 89-0602 MHP
12)
13 Plaintiff,) ~~PROPOSED~~ ORDER DENYING DEFENDANT'S
14 v.) MOTION FOR REDUCTION OF SENTENCE
15 JAMES BEASLEY,)
16 Defendant.)
17

18 James Beasley has requested a reduction in his sentence pursuant to 18 U.S.C.
19 § 3582(c)(2) based on the United States Sentencing Commission's November 1, 2007, reduction
20 to the Sentencing Guidelines' offense level for crimes involving crack cocaine. The Court has
21 considered the parties' briefs, including the defendant's Motion and accompanying
22 Memorandum of Points and Authorities, the United States' Opposition, and the defendant's
23 Reply. The Court has also considered the arguments made by the parties at the August 25, 2008,
24 hearing on this matter. At that hearing, the Court orally DENIED the defendant's motion. This
25 memorandum memorializes that order.

26 On December 3, 1991, the defendant was sentenced by the Honorable Eugene F. Lynch
27 to 360 months of imprisonment following his conviction by a jury for conspiracy to possess with
28 intent to distribute and to distribute cocaine, in violation of 21 U.S.C. § 846, and his convictions

1 following guilty pleas to one count of conspiracy, in violation of 18 U.S.C. § 371, three counts of
2 tax evasion, in violation of 26 U.S.C. § 7201, three counts of unlawful structuring of currency
3 transactions, in violation of 31 U.S.C. § 5324(3), four counts of loan fraud, in violation of 18
4 U.S.C. § 1014, and two counts of tampering with a witness, in violation of 18 U.S.C. §§ 1512
5 and 1515.¹

6 In connection with sentencing, Judge Lynch issued a 22-page memorandum setting forth
7 his Findings of Fact and Conclusions of Law regarding the defendant's objections to the
8 Presentence Investigation Report (PSR). In that memorandum, Judge Lynch recited the facts and
9 reasoning upon which he concluded that the defendant was responsible for conspiring to possess
10 with intent to distribute at least 50 kilograms of cocaine and that, as a result, his Sentencing
11 Guidelines' base offense level was 36 under the 1987 version of the Guidelines that applied to
12 the defendant's sentencing. Judge Lynch's offense level determination was based on his
13 calculation of the amount of powder cocaine involved in the offense. At no point did Judge
14 Lynch make reference to or apply the Guidelines for crack cocaine or cocaine base.

15 Judge Lynch ultimately concluded that the defendant's base offense level was 36, based
16 on the amount of powder cocaine involved in the offense. To that base offense level, he added 4
17 points for the defendant's leadership role, resulting in a total offense level of 40. Judge Lynch
18 declined to increase the offense level for obstruction of justice and declined to reduce the offense
19 level for acceptance of responsibility. Judge Lynch found that the defendant's Criminal History
20 Category of IV was overstated and reduced it to a Category II. The resulting sentencing range
21 was 324-405 months. Judge Lynch sentenced the defendant to 360 months, a sentence in the
22 middle of the Guidelines' range.

23 On November 1, 2007, the Sentencing Commission amended the Sentencing Guidelines
24 to reduce the offense levels applicable to cases involving crack cocaine or cocaine base. The
25 Sentencing Commission did not alter the Guidelines with respect to cases involving powder
26 cocaine. Nevertheless, the defendant requests that the Court reduce his sentence pursuant to
27

28 ¹ Although the defendant was convicted of these 13 additional counts, they had no
effect on his offense level under the Sentencing Guidelines.

1 Title 18, United States Code, Section 3582(c)(2). That section provides in pertinent part:

2 The court may not modify a term of imprisonment once it has been imposed
3 except that—

4 * * *

5 (2) in the case of a defendant who has been sentenced to a term of imprisonment
6 based on a sentencing range that has subsequently been lowered by the
7 Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the
8 defendant or the Director of the Bureau of Prisons, or on its own motion, the court
9 may reduce the term of imprisonment, after considering the factors set forth in
10 section 3553(a) to the extent that they are applicable, if such a reduction is
11 consistent with applicable policy statements issued by the Sentencing
12 Commission.

13 By its terms, Section 3582(c)(2) provides for a reduction in sentence only where a
14 defendant was sentenced based on a sentencing range that was lowered by subsequent
15 amendment of the applicable Sentencing Guidelines. The sentencing range for powder cocaine
16 under which the defendant was sentenced has not been lowered by the Sentencing Commission;
17 therefore, Section 3582(c)(2) does not provide an avenue by which the Court may modify his
18 sentence.

19 For the reasons set forth above, the Court DENIES the defendant's Motion for Reduction
20 of Sentence.

21 The defendant has also petitioned this Court for release under a writ of *audita querela*.
22 That petition is DENIED. A writ of *audita querela* is not available under the facts of this case
23 because the relief the defendant seeks - his release - is cognizable in a petition for writ of *habeas*
24 *corpus* under 28 U.S.C. § 2255. *See Carrington v. United States*, 503 F.3d 888 (9th Cir. 2007);
25 *United States v. Valdez-Pacheco*, 237 F.3d 1077, 1079 (9th Cir. 2001).

26 DATED: October 10, 2008

